



February 3, 2000

Mr. R. Vic Morgan
President
Sul Ross State University
SR Box C114
Alpine, Texas 79832

OR2000-0371

Dear Mr. Morgan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 131905.

Sul Ross State University (the "university") received a request for "any computer generated booklist report maintained by the University, or on behalf of the University by any contractor, lessee, agent, representative, affiliate or entity, which specifies the textbooks and any other course materials required or recommended for each course during the second term or semester of the 1999-2000 academic year." The requestor specifies that the requested information "should contain but is not limited to" "[a]cademic department, course number and section number or letter," "[e]stimated or actual enrollment figures," "[p]rofessor's last name," "[e]ach book title and author as requested by the professor," "[a]ll corresponding book ISBN numbers," "[t]he required/optional status of all books," "[w]here available, the edition, copyright date, and publisher information for each book title." Finally, the requestor states:

In the unlikely event that the University cannot produce a computer booklist printout, we would be willing to accept photocopies of the original textbook adoption requisition forms or other equivalent documents that are filled out by faculty members or academic departments to request required or recommended books for the upcoming term.

You have submitted a completed "Course Book Information Request" as responsive to the request for information. We take this to be a representative sample of the information responsive to the request.¹ You advise that "Barnes and Noble College Bookstores" ("B&N") considers the information proprietary. B&N was notified of the request and has submitted arguments that the information is not public information under the act and that it is also protected from disclosure by section 552.110 of the act.

Section 552.002 of the act defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." You do not indicate whether the submitted information is "collected, assembled, or maintained by the university. To the extent that the submitted information is "collected, assembled or maintained" by the university we believe that it is "public information" subject to the act. However, to the extent that the submitted information is not "collected, assembled or maintained" by the university, it is our opinion, as explained below, that the information is not "public information" subject to the act.

The act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). However, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the act if a governmental body owns or has a right of access to the information. *See*, Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 (1989).

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Here, B&N advises that it operates under contract with the university and that it gathers the kind of information the university submitted as responsive to the request from faculty members but that the “[u]niversity administration is not involved in the process.” Based on our understanding of the relationship between B&N and the university, it is our opinion that the university neither owns nor has a right of access to such information in the hands of B&N where the university has not itself “collected, assembled or maintained” the information and that such information in the hands of B&N is thus not “public information” subject to the act.² We thus need consider B&N’s other claim, that the information at issue is protected by section 552.110 of the act, only with respect to information responsive to the request which is “collected, assembled or maintained” by the university.

Section 552.110 of the Government Code excepts from required public disclosure

- (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision [and]
- (b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

This section protects two categories of information: 1) trade secrets and 2) commercial or financial information. We understand B&N to limit its section 552.110 claim to the protection of subsection(b) of section 552.110 for “commercial or financial information.” B&N asserts, essentially, that release of the information to the requestor will enable a competitor “to offer the precise inventory that will be offered by [B&N] without bearing the cost of gathering the information.” We note, however, that the substantive information at issue was “obtained” not from B&N, but, as B&N’s brief acknowledges, from professors at the university. There has been no showing, under section 552.110(b), that release of the information at issue would cause substantial competitive harm “to the person from whom the information was obtained.” Accordingly, to the extent the university holds information responsive to the request, it may not withhold such information under section 552.110. Such information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

²B&N itself acknowledges in its correspondence with this office that B&N’s information is not subject to the act “unless it is maintained by the [u]niversity.”

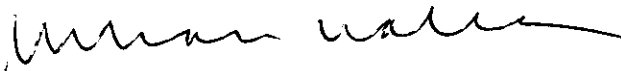
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 131905

Encl. Submitted documents

cc: Ms. Gayle Weiswasser
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(w/o enclosures)